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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,401	02/25/2004	Manfred Hochkoenig	028987.53207US	9804
23911	7590	06/07/2006	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			COLLADO, CYNTHIA FRANCISCA	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/785,401	HOCHKOENIG ET AL.	
	Examiner	Art Unit	
	Cynthia F. Collado	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 4/26/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 26-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/4/2005</u>  | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/26/2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 26-30, 32-36 and 38-44 are rejected under 35 U.S.C. 102(b) as anticipated by Ashe et al'299 (Us Patent No.6, 431,299).

Referring to claims 26,32,38 and 44, Ashe discloses a cooling system for an automotive drive unit for a drive unit such as an internal combustion engine situated in a rear end of a vehicle with respective transmission (see figure 5, element 34), a covering panel part situated beneath the drive unit as part of a covering panel part situated beneath the drive unit as part of a covering undercarriage of a vehicle superstructure, wherein a warmer air layer zone formed on an engine side is layered above oncoming air supplied to a transmission case through air inlets in the covering panel part of the undercarriage, forming a cold air layer zone, and wherein a temperature interface

develops between the cold air and the warmer air layer zones, temporarily running approximately in an area of an upper border of the transmission case and through a lower partial area of an engine housing which is connected to the transmission case, (although the prior art fails to state that the temperature interface develops between the cold air and the warmer air layer zones, examiner takes official notice that it's inherent when you have different temperatures, the temperature interface will occur, see MPEP 2144.02 "reliance on scientific theory").

Referring to claim 27,28,29,33,34,35,39,40,41 and 43, Ashe discloses wherein the air inlets are provided on a front side, as seen in a direction of travel, beneath the transmission case in the covering panel part of the undercarriage, and wherein air outlet openings are provided at the rear beneath the engine housing in a drive unit installation space (see figure 5, element 54,34 and 51) and (see figure 4, element 47 and 54 for air inlet opening).

Referring to claim 30,36 and 42, Ashe discloses an air blower provided for the engine at the top in an drive unit installation space, and wherein said scavenging air blower has compressed air inlet supply which acts upon the warmer air layer zone (see figure 5, element 46).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 31 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashe et al'299 (Us Patent No.6, 431,299).

Referring to claims 31 and 37, although Ashe fails to disclose the increase of air flowing into the drive unit installation space, examiner takes official notice, when there is an increase of airflow the cold air layer zone can be enlarged as a function of the driving speed of the vehicle and can increase in size upward due to air flowing into the drive unit installation space through the air inlets, displacing the hot air layer zone upward, and wherein an outward flow of hot air on the engine side through the air outlet openings can be achieved based on the principles of fluid dynamics.

### ***Response to Arguments***

Applicant's arguments with respect to claims 26-44 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No.7, 028,646 issued to Wagner teaches a cooling system for skid steer loader including fan assembly mounted to engine.

US Patent No 6,431,299 issued to Eggert, Jr. teaches a cooling air ducting for excavator.

US Patent No.3, 147,814 issued to P.E.Suhre teaches an engine cooling and silencing system.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia F. Collado whose telephone number is (571)2728315. The examiner can normally be reached on mon-fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)2726914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
CFC 6/4/06

  
J. ALLEN SHRIVER  
PRIMARY EXAMINER